

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 08-10030-WEB
)	
JOHNNY VARAY MORENO,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

The defendant filed a Motion for Return of Property (Doc. 47) which was seized by law enforcement following his arrest. Defendant requests the return of the following property:

- 1.) \$4000.00 (\$3500.00 located inside shoe, and \$500.00 located in pocket),
- 2.) One suitcase with clothes (estimated value \$300.00),
- 3.) One cellular phone (estimated value \$100.00),
- 4.) One typewrite machine (estimate value \$100.00).

The Government responded, stating that all the property seized from the defendant was disposed of in accordance with the law.

Federal rules allow for the return of property to “a person aggrieved by an unlawful search and seizure of property or by the deprivation of property.” Fed.R.Crim.Pro. 41(g). Once criminal proceedings are terminated, “the person from whom the property was seized is presumed to have a right to its return, and the government must demonstrate that it has a legitimate reason to retain the property.” United States v. Rodriguez-Aguirre, 264 F.3d 1195, 1213 n. 14 (10th Cir. 2001). Relief under Rule 41 is available if the defendant can show irreparable harm and an inadequate remedy at law. Clymore v. United States, 164 F.3d 569, 571 (10th Cir. 1999). However, if the property is no longer in the possession of the government, then Rule 41 is not an appropriate vehicle for relief. Clymore v. United States, 415 F.3d 1113, 1120

(10th Cir. 2005).

The Government states that a review of the local and United States Secret Service property and evidence reports in the case shows that no valid United States Currency was seized from the defendant. Counterfeit currency was seized, and disposed of according to Federal law. The Government attached the United States Secret Service Investigative Report. The report does not list a suitcase, but does list a typewriter box. The Report shows that all the evidence collected in this case, including the typewriter, cell phone, typewriter box, and counterfeit currency, have all been destroyed.

Rule 41 provides no relief to the defendant. The Government is no longer in possession of any of the items seized. In light of this evidence, the defendant's motion is denied.

IT IS THEREFORE ORDERED that defendant's Motion for Return of Property (Doc. 47) be DENIED.

IT IS SO ORDERED this 8th day of March, 2011.

s/ Wesley E. Brown
Wesley E. Brown
Senior Judge, United States District Court